

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of Great Oaks Water Company (U 162-W) for an Order authorizing it to increase rates for water service for its total service area.

Application 02-11-048
(Filed November 27, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
RESOLVING PENDING MOTION**

This ruling denies without prejudice Great Oaks Water Company's (GOWC) ex parte motion for an interim surcharge to recover increased groundwater charges and purchased power costs subject to refund. This ruling also denies in part and grants in part the Office of Ratepayer Advocates' (ORA) motions to suspend the schedule and to dismiss GOWC's application for a general rate increase.

GOWC'S Motion for an Interim Surcharge

On January 27, 2003, GOWC filed a request for an interim surcharge subject to refund of \$1,042,881 to permit recovery of increasing groundwater charges and purchased power costs. GOWC states it currently is operating at a loss and that its financial health and cash flow are threatened. ORA opposed GOWC's request, because ORA's analysis showed GOWC's present cash revenues cover its costs. GOWC replies that it experienced an operating loss for 2002 due to increased groundwater charges and purchased power costs.

Where there is a fiscal emergency, the Commission has authority to grant an interim rate increase. (*TURN v. CPUC*, (1988) 44 Cal. 3d 870, 878.) The

Commission can also grant interim relief in an emergency condition. (*Re Pacific Telephone and Telegraph Co.*, (1949) 48 CPUC 487, 488.) Recently, the Commission found that the energy crisis caused a cash flow problem that impaired credit and an impending inability to pay current bills that could interfere with the utility's ability to procure electricity. (Application of Southern California Edison Co., D.01-01-018, 2001 Cal. PUC LEXIS 44 ** 14-15.)

GOWC has not established that it is experiencing a fiscal emergency. Instead, GOWC predicts a future fiscal emergency. In documents filed with the Commission, GOWC's 2000 and 2001 Annual Report Income Statements and February 26, 2003 Advice Letter (AL) 155 state GOWC had a net profit of \$1,788,812 and purchased power undercollection of \$113,317 in 2000 and a net profit of \$788,594 and a purchased power undercollection of \$588,413 in 2001. These documents filed with the Commission indicate GOWC had sufficient cash in 2000 and 2001. GOWC will not file its annual report until the end of March and the Commission does not have any figures for purchased power and groundwater charges undercollections for 2002. If the Commission authorizes recovery of the amount requested in AL 155, \$966,536, it does not appear GOWC will face a fiscal emergency in 2003. In addition, this proceeding currently is on track to reach a decision on GOWC's requested rate increase. Thus, GOWC's motion for ex parte relief fails to establish a current financial emergency and is denied without prejudice.

ORA's Motion to Suspend

ORA filed its March 3, 2003 motion to suspend, because GOWC did not provide timely notice to its customers of the requested rate relief, denying those customers the opportunity to be heard. ORA alleges GOWC's notice fails to conform with Pub. Util. Code § 454(a).

GOWC replied that notice was provided as soon as possible after the January 22, 2003 prehearing conference (PHC) and that the delay resulted from coordination with the Commission on contacts with customers in the absence of a scheduled public participation hearing (PPH). In order to ensure customers received notice in advance of the hearings, GOWC mailed a separate notice on March 6, 2003 to inform customers of the proposed rate increase and the scheduled hearings. GOWC states that it followed the Commission's notice procedure, which requires notice of filing of the application concurrent with notice of a scheduled public meeting.

At the PHC, ORA stated no public meeting would be held and that the current practice was to have a PPH after Commission staff served its report. (Reporter's Transcript, pp. 4-5.) The notice approved by the Commission's Public Advisor's Office and sent to GOWC's customers gives customers until April 11, 2003 to provide the Commission with input on GOWC's proposed rate increase. There is no final determination on scheduling a PPH.

Current practice on notice of the filing and public meeting and notice of public hearings deviates from the procedures issued by the Division of Administrative Law Judges and the Water Branch in 1981. Although GOWC did not strictly follow those requirements, this proceeding similarly is not in strict conformance with the rate case plan. To suspend the schedule when customers have received notice and have the opportunity to participate in this proceeding would not give customers greater input. However, a PPH will be scheduled if necessary. ORA's motion is otherwise denied.

ORA's Motion to Dismiss

On March 7, 2003, ORA filed a motion to dismiss GOWC's application for a general rate increase. ORA alleged GOWC failed to make a prima facie case to

justify its requested increase, because GOWC's application contains mistakes and inconsistencies, necessitating the expenditure of considerable time and resources by ORA to determine whether there is support for the requested rate increase. ORA requests that the Commission dismiss the application without prejudice or require that GOWC supplement its application and that this proceeding be suspended during that time.

GOWC responds that ORA fails to establish sufficient grounds for dismissal because ORA fails to cite a significant error. In addition, ORA has alternatives to requesting dismissal such as recommending disallowances or permitting GOWC witnesses to make corrections to their testimony.

A motion to dismiss requires the Commission to determine whether the party bringing the motion wins based solely on undisputed facts and matters of law. The Commission treats such motions as a court would treat motions for summary judgment in civil practice. (*Westcom Long Distance, Inc. v. Pacific Bell et al.*, D.94-04-082, 54 CPUC2d 244, 249.) Because ORA alleges some, but not all, of GOWC's application is deficient, there is no basis to dismiss the application in its entirety. In addition, the parties have agreed to mediate their differences on the alleged mistakes and inconsistencies during portions of the scheduled hearings. Finally, GOWC has the burden of proof on its proposed rate modifications and increases, so any deficiencies in the support for its application will impact the timing of and the basis for relief granted. ORA's motion is otherwise denied.

IT IS RULED that:

1. Great Oaks Water Company's (GOWC) ex parte motion for an interim surcharge to recover increased groundwater charges and purchased power costs subject to refund is denied without prejudice.

2. The Office of Ratepayer Advocates' (ORA) emergency ex parte motion to suspend schedule is granted in part and denied in part.

3. ORA's motion to dismiss application for general rate increase of GOWC is granted in part and denied in part.

Dated March 19, 2003, at San Francisco, California.

/s/ JANICE GRAU

Janice Grau
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Resolving Pending Motion on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated March 19, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.